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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1339 OF 2007

Sahara India Commercial Corporation Limited — Petitioner

versus

Haushiram Dagadu Mangla and others — Respondents

Mr.M.S.Karnik for petitioner.

CORAM : A.S.OKA, J.

DATE : 01st March 2007

PC :

1. Heard learned advocate for the petitioner. The challenge in this petition under Article 227 of the Constitution of India is to the judgement and decree dated 26th June 2006. It is not in dispute that under section 96 of the Code of Civil Procedure, 1908 an appeal can be preferred for challenging the impugned decree. The petitioner has not preferred an appeal. The contention of the learned advocate for the petitioner is that the first defendant in the suit had died before institution of the suit and, therefore, the decree is nullity. It is submitted that the petitioner was not a party to

MST

the suit and therefore the petitioner is not in a position to prefer an appeal.

2. I have considered the submissions. The petitioner can always apply for grant of leave to the Appellate Court to prefer an appeal against the decree. If the Appellate Court grants leave, the petitioner can prefer an appeal and challenge the impugned judgement and decree. In view of this position it is not necessary to entertain this writ petition under Article 227 of the Constitution of India. Petition is rejected. Notwithstanding rejection of the writ petition, it will be open for the petitioner to avail of the appropriate remedy. All contentions on merits are kept open.

(A.S.OKA, J.)